

§ 2402.6

(e) *Content of denial.* When OSTP denies a request for records, either in whole or in part, the written notice of the denial shall state the reason for denial, and cite the applicable statutory exemption(s), unless doing so would harm an interest protected by the exemption(s) under which the request was denied, and notify the requester of the right to appeal the determination as specified in § 2402.7. The requester's failure to make advance payment or to give a satisfactory assurance of full payment required under § 2402.8 may be treated as a denial of the request and appealed under § 2402.7.

(f) *Identifying responsive records.* In determining which records are responsive to a request, OSTP ordinarily will include only records in its possession as of the date the component begins its search for them.

(g) *Consultations and referrals.* When OSTP receives a request for a record in its possession, it shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under FOIA and, if so, whether it should be disclosed as a matter of administrative discretion. If the receiving component determines that it is best able to process the record in response to the request, then it shall do so. If the receiving component determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record after consulting with the agency best able to determine whether to disclose it and with any other agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request regarding that record to the agency best able to determine whether to disclose it, or to another agency that originated the record (but only if that agency is subject to the FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it. OSTP shall notify the FOIA requester in writing that a referral of records has been made, provide the name of the agency to which the referral was directed, and include that agency's FOIA contact information.

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(h) *Redactions.* For redactions within disclosed records, OSTP shall:

(1) Indicate the FOIA exemption under which a redaction is made, unless including that exemption would harm an interest protected by the exemption; and

(2) Indicate, if technically feasible and reasonable, the amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made.

§ 2402.6 Business information.

(a) *In general.* Business information obtained by OSTP from a submitter will be disclosed under FOIA only under this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means commercial or financial information obtained by OSTP from a submitter that may be protected from disclosure under Exemption 4 of FOIA.

(2) *Submitter* means any person or entity from whom OSTP obtains business information, directly or indirectly. The term includes corporations; state, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be protected from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* OSTP shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that seeks its business information, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the business information requested or include copies of the requested records or record portions containing the information. When notification of a voluminous number of submitters is required, notification may

be made by posting or publishing the notice in a place reasonably likely to accomplish it.

(e) *Where notice is required.* Notice shall be given to a submitter wherever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) OSTP has reason to believe that the information may be protected from disclosure under Exemption 4.

(f) *Opportunity to object to disclosure.* OSTP will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. If a submitter has any objection to disclosure, the submitter is required to provide a detailed written statement of objections. The statement must specify all grounds for withholding any portion of the information under any exemption of FOIA and, in the case of Exemption 4, the submitter must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified, the submitter will be considered to have no objection to disclosure of the information. Information provided by the submitter that OSTP does not receive within the time specified shall not be considered by OSTP. Information provided by a submitter under this paragraph may itself be subject to disclosure under FOIA.

(g) *Notice of intent to disclose.* OSTP shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever OSTP decides to disclose business information over the objection of a submitter, OSTP shall give the submitter written notice, which shall include:

(1) A statement of the reason(s) why each of the submitter's disclosure objections was not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) *Exceptions to notice requirements.* The notice requirements of paragraphs

(d) and (g) of this section shall not apply if:

(1) OSTP determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600 (3 CFR, 1988 Comp., p. 235); or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, OSTP shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(i) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of business information, OSTP shall promptly notify the submitter.

(j) *Corresponding notice to requesters.* Whenever OSTP provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, OSTP shall also notify the requester(s). Whenever OSTP notifies a submitter of its intent to disclose requested information under paragraph (g) of this section, OSTP shall also notify the requester(s). Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, OSTP shall notify the requester(s).

§ 2402.7 Appeal of denials.

(a) A denial of a request for records, either in whole or in part, may be appealed in writing to the Chief FOIA Officer within 30 working days of the date of the letter denying an initial request.

(b) Appeals may be sent via email to ostpfoia@ostp.eop.gov or by mail to: Chief FOIA Officer, Office of Science and Technology Policy, Eisenhower Executive Office Building, 1650 Pennsylvania Ave. NW., Washington, DC 20504. Updates to this contact information will be made on the OSTP Web site. The appeal letter should specify the internal control number assigned to the FOIA request by OSTP in its response,